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10/550,386

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EXAMINER

CORMIER, DAVID G

ART UNIT

PAPER NUMBER

1792

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/550,386 | <b>Applicant(s)</b><br>HARTVIGSSON, MARCUS |  |
|                              | <b>Examiner</b><br>DAVID CORMIER     | <b>Art Unit</b><br>1792                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments/Amendments***

1. This Office action is responsive to the amendment filed October 13, 2009. Claims 1-7, 9 and 10 are pending. Claims 1, 3, 6 and 10 have been amended.
2. The rejection of Claims 1-7, 9 and 10 under 35 U.S.C. 112, second paragraph, has been withdrawn in response to Applicant's amendments.
3. Claims 1-7 and 9 were rejected under 35 U.S.C. 102(b) as being anticipated by Payzant (US 5,937,879). Claim 9 was also rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant. Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant in view of Taylor, Jr. et al. (US 5,660,195). Applicant's arguments against have been fully considered but they are not persuasive.
4. Applicant argues that Payzant does not disclose the claimed liquid flow path. Specifically, Applicant argues that when the filter (144) is in a raised position (Figure 6), corresponding to Applicant's "second position," circulating liquid does not bypass the claimed collecting part (which is interpreted to read on the upper portion of the filter) because if the filter is in a raised position, water also flows through the upper portion of the filter. The Examiner respectfully disagrees with the interpretation of the claim in view of Payzant. This limitation is a functional limitation which is considered to be met by Payzant. When the filter is in a raised position, liquid is capable of bypassing the collecting part of filter (144) by flowing through the filter (138) into the sump area (110) and then flowing into the perforations at the bottom of the filter (144) as it mixes in the

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sump (110). Liquid following this flow path would completely bypass the upper portion of the filter (144). Because the structure disclosed by Payzant is *capable of performing* the claimed function, it anticipates the claim.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**6. Claims 1-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Payzant (US 5,937,879).**

7. Regarding Claim 1, Payzant discloses a filter system for a household dishwasher comprising a wash space (24) and a liquid circuit that comprises a course sieve (144) and one or several fine filters (138), the course sieve being movable between a first position and a second position (see Figures 5 and 6) with the aid of actuating means, "solenoid" (182; col. 6, lines 5-44) arranged in the dishwasher characterized in that a part of the circulating liquid in the first position of the coarse sieve flows through a collecting part of the coarse sieve (the "collecting part" could be construed as the upper portion of the perforated part of the coarse sieve) whereas the circulating liquid in the second position of the coarse sieve bypasses said collecting part (such as when the sieve is raised in the upper position of Figure 6 and liquid flows through the screen, 138, and then in and around the bottom portion, but not through the top portion, of the perforated part of the coarse sieve).

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8. Regarding Claim 2, the course sieve being in certain positions during certain dishwashing cycles is considered to be intended use of the apparatus, as taught by Payzant, and is not being given patentable weight. The claimed intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

9. Regarding Claim 3, Payzant discloses that the course sieve has a cylindrical body which is open at the top and has a bottom (Figure 6; col. 5, lines 58-61).

10. Regarding Claim 4, in the second position (the raised position of Figure 6), the bottom portion of the perforated part of the course sieve is considered to be a "filtering area" (i.e. that portion which is never covered by the collar, 142).

11. Regarding Claim 5, the top portion of the perforated area of the course sieve, such as the top half of the sieve, is considered a collection portion, which has a circular/cylindrical wall and a bottom (the "bottom" of the collection portion could be interpreted to be the plane which separates the "collection portion" from the "filtering area") with the filtering area being an extension of the circular wall part below said bottom.

12. Regarding Claim 6, Payzant discloses electrical circuitry for controlling the machine (Figure 7; col. 7, lines 4 and 5), the circuitry also controls the solenoid, 182 (col. 7, lines 48-53).

13. Regarding Claim 7, Payzant discloses a liquid collecting container divided into a first chamber, "basin" (108) and a second chamber (the bottom portion of the wash space directly at the top of the coarse sieve) divided by the fine filter (138), the first

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chamber communicating with a circulation pump whereas the second chamber is arranged to receive the coarse sieve.

14. Regarding Claim 9, because no orientation of the dishwasher has been specified, the actuating means, "solenoid" (182) of Payzant could be construed as being below the coarse sieve (see Figure 5).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**16. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant (US 5,937,879).**

17. Payzant is relied upon as applied to Claim 1. The actuating means of Payzant is disclosed as being above the coarse sieve (Figure 5), not below the coarse sieve as claimed. It would have been obvious to one of ordinary skill in the art to move the solenoid to below the coarse sieve because this would simply be a rearrangement of parts, which is considered to be an obvious design choice. See MPEP 2144.04 (VI) (C).

**18. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant (US 5,937,879) in view of Taylor, Jr. et al. (US 5,660,195).**

19. Payzant is relied upon as applied to Claim 9. Payzant does not expressly disclose that the actuating means is a wax actuator.

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20. Taylor, Jr. discloses a dishwasher which uses a wax actuator (32) for actuating a valve. The wax actuator imparts a gradual movement to an element, such that movement of the element is gentle and quiet (col. 4, lines 6-30).

21. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the solenoid of Payzant with a wax actuator, such as in Taylor, Jr., which would yield the predictable result of having an effective actuation means that moves gently and quietly.

### ***Conclusion***

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

23. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CORMIER whose telephone number is (571) 270-7386. The examiner can normally be reached on Monday - Thursday 8:30 - 6:00.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/  
Supervisory Patent Examiner, Art  
Unit 1792

/DGC/  
David Cormier  
01/09/2009